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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,506	07/07/1999	BOZIDAR FEREC-PETRIC	P-8027	5334

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MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

EXAMINER

PRIETO, BEATRIZ

ART UNIT	PAPER NUMBER
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2142

13

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/348,506

Applicant(s)

FEREK-PETRIC, BOZIDAR 

Examiner

Prieto Beatriz

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. This communication is in response to Amendment filed 01/09/04, claims 1-35, have been 36-41 have been added. Claims 36-41 have been examined and remain pending.
2. Claim 39 and 40 are objected to because of the following informality: use of non-obvious acronyms. In this case, applicant is requested to spell-out in the claim language non-obvious acronyms, ECG and QRS, i.e. on claims 39 and 40, respectively.

Claim Rejection under 35 U.S.C. 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
In this case, the term "crucial" in claim 40 is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claim will be given the broadest interpretation in light of the specification (see MPEP 2111).

Claim Rejection under 35 U.S.C. 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. Claim 36-39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy (US 6,312,378) in view of Comer, D.: Internetworking with TCP/IP, Vol. I, Principles, Protocols and Architecture, 3rd Edition, 1995, pages

Regarding claim 36, Bardy teaches substantial features of the invention as claimed including,

a programmer in telemetry communication with an implantable device (col 2/lines 11-50, col 5/lines 49-59), including:

transmitting and receiving data between a programmer and an implantable device (col 5/lines 49-col 6/line 1);

transmitting and receiving between the programmer and a computer over a network ("server") (col 6/lines 1-5); although Bardy teaches where the communication over the network with a remote server includes TCP/IP communication or other network protocol stack communication, it is silent with respect to the acknowledgment required in under TCP/IP communication and the lack of acknowledgement require under UDP/IP;

a reliable stream delivery protocol (TCP) part of the TCP/IP suite (section 13.1 to 13.2) to transfer a stream of bits of data between two application programs executing on their respective sending or source machine and the recipient or destination machine, for sending a data stream from a source machine to a destination machine (section 13.3), this reliable protocol uses a acknowledgment technique which requires the recipient to communicate across the network with the source, sending back an acknowledgment as it receives data from the source (see Figs. 13.1-13.2 & 13.4)(section 13.4-13.5);

In the TCP/IP suite, the User Datagram Protocol (UDP) provides the similar capabilities as TCP in that it enables application programs running on a host computer to send stream bits (datagrams) to another application, each datagrams also including a destination/source address, making it possible for the UDP protocol software at the destination to deliver the message to intended recipient and for the recipient to send a reply, UDP uses IP to transport stream data from one host machine to another providing unreliable, connection datagram delivery, it does not use acknowledgment to make sure the data stream arrived (section 12.3);

It would have been obvious to one ordinary skilled in the art at the time the invention was made given the suggestions of Bardy for transmitting data from the programmer to a remote server, office and/or database over the Internet, that the principals under which TCP/IP protocol suite communication operate will be implemented to establish communication between two or more computer. Thereby, any host or program executing on a machine with sending and receiving capabilities communicating under a reliable transport stream as TCP performs claimed functionalities, i.e. send a data stream and/or sending a receipt in response to received data stream in the case of TCP and transmitting and receiving data streams without sending receipts as in the case of UDP. The teachings of Comer do not modify the system or structure of Bardy, they simply identify the communication principles inherent in Bardy's system.

Regarding claim 37, TCP/IP contains the sender and destination IP address (Comer: see Fig. 13.7, source/destination port addresses on page 204).

Regarding claim 38, UDP/IP contains the recipients IP address (Comer: see Fig. 12.1 source and destination port address on page 181).

Regarding claim 39, wherein the data stream sent from the server is a signal retrieved by the programmer from the implanted device from the implantable device” (Bardy; col 4/lines 4-12), heart or cardiac related to the patients condition “real-time ECG waveform” (Bardy: col 1/lines 15-38, and electrocardiogram signal see col 1/lines 59-65).

Regarding claim 41, the signal measured by the implanted device include electrocardiogram cardio signal “real-time ECG waveform” (col 1/lines 59-65) is readily ascertainable (Bardy: col 4/lines 26-28), these signal, the collected cardiovascular measures set includes individual cardiovascular measures which each relate to patient information recorded by the cardiac monitoring device for an individual patient. (Bardy: col 4/lines 15-22), thereby not crucial or related to the monitoring medical implanted device.

7. Claim 40 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy (US 6,312,378) in view of Comer in further view of Moore et. al. (US 4,750,495).

Regarding claim 40, although Bardy does not explicitly teach where the ECG comprise QRS signals

Moore teaches an electro cardio gram comprising QRS signal (col 3/lines 14-28).

It would have been obvious at the time the invention was made given the suggestion of Bardy for retrieving electrocardiogram data from the pacemaker or a broad class of implantable device including from implanatable devices such as cardiovascular monitors to sense electrical activity in the atrium and ventricle of the heart such as with QRS signals.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prieto, B. whose telephone number is (703) 305-0750. The Examiner can normally be reached on Monday-Friday from 6:00 to 3:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Jack B. Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, status information for published application may be obtained from either Private or Public PAIR, for unpublished application Private PAIR only (see <http://pair-direct.uspto.gov> or the Electronic Business Center at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to the Central Fax Office:

(703) 872-9306, for Official communications and entry;

Or Telephone:

(703) 306-5631 for TC 2100 Customer Service Office.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington VA, Fourth Floor (Receptionist), further ensuring that a receipt is provided stamped "TC 2100".



B. Prieto
TC 2100
Patent Examiner
October 13, 2004